IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6952 of 1989

For Approval and Signature:

Hon'ble MR.JUSTICE KUNDAN SINGH

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

MAHESANA JILLA SAHAKARI BANK KARMACHARI SANGH
Versus
STATE OF GUJARAT

Appearance:

MR PK JANI for Petitioner
MR KT PARIKH AGP or Respondent No. 1 & 2.
MR MEHUL K VAKHARIA for Respondent No. 3

CORAM : MR.JUSTICE KUNDAN SINGH

Date of decision: 25/06/2001

ORAL JUDGEMENT

List is revised. None appears on behalf of the

petitioner to press this petition. However, I have gone through the petition and considered the contents thereof.

2. This petition has been filed by Mehsana Jilla Sahakari bank Karmachari Sangh (union) for quashing and setting aside the impugned order and award passed by the Industrial Court, Ahmedabad in Appeal (IC) No. 88 of 1988 decided on 21.4.1989 and also for quashing and setting aside the judgment and order pased by the Member of Industrial Court in Review Application No.(I.C.) No. 2 of 1989 decided on 19-9-1989. The respondent no. 3 is the Manager of District Cooperative Bank. The provisions of the Bombay Industrial Relations Act, 1947 are applicable to the employees working under the Bank. The standing orders of the Bank are in operation as per Clause 21 (7) of the Standing Orders which provides the age of superannuation of the employee of the Bank is 60 years and the Manager has power and discretion to grant extension to any employee who is reaching the age of superannuation for a period not exceeding to one year at one time. The discretion for extension of service to retire the employee is always exercised in favour of the persons who are available to them and the persons who are active union workers are not given such extension which result into discriminatory treatment and resentment among the large numbers of the union.

3. The union gave an application on 30-8-1987 to the Labour Commissioner for making necessary changes in the Standing Orders and prayed that the age of each and every of the employee of the Bank should be retired at the age of 60 years and after attaining the age of 60 years no extension should be given to any person either by way of fresh appointment or in any manner. The proposed changes were objected by the Bank. However, the Deputy Labour Commissioner respondent no. 1 allowed the proposed changes in the Standing Order at Clause 21 (7) vide order dated 29.9.1988. The Bank being dissatisfied with the order of the Deputy Labour Commissioner preferred Appeal (IC) No. 88 of 1988 before the Industrial Court u/s 36 of the Act. The Industrial Court vide its order dated 11.4.1989 allowed the appeal and quashed and set aside the order dated 29-9-1988 of the Deputy Labour Commissioner and the application for making changes in Clause 21 (7) which was granted by the Labour Commissioner was also rejected. The petitioner received the copy of the order on 27-4-1989 and found that some important aspects have not been properly dealt with by the Industrial Court and new and important material which was in possession of the petitioner has not been brought to the notice of the Industrial Court as a result of

thereof some mistake on the facts of the record has been committed on the part the Industrial Court. Therefore, Review Application No. 2 of 1984 u/s 37 of the Act was moved by the petitioner. Review Application was fixed on 8-8-1989. The petitioner came to know that the Board of Directors of the Bank convened meeting on 25-7-1989 for consideration of the appointment of ex-employees - Chelabhai Hargovinddas Patel.

4. The petitioner filed an application u/s 119 (b) for interim relief in the Revision Application No. 2/89 on 21-7-1989. Chelabhai Hargovinddas Patel was supposed to be given new appointment in the Bank only because of the fact that he was close confident of the Chairman of the Bank, extension should not be given to him as per the order of the Deputy Labour Commissioner dated 31-10-1988. Such practice will restrict scope of promotional avenue in the District Bank and it will create further resentment amongst the staff. Hence, the application for interim relief filed in the review application before the Industrial Court was rejected. Hence, the petitioner filed Special Civil Application No. 5244 of 1989 before this Court on 24-7-1989 and this Court disposed of the said petition on 25-7-1989 directing to join Chelabhai Patel as party respondent no. 4 and issued notice to the respondent no. 3 and newly added respondent no. 4 returnable on 3-8-1989 and ad-interim relief in terms of para 20 (B) till further orders was granted. The petition came up for hearing on 4-8-1989, 7-8-1989, 14-8-1989 and 27-8-1989 and this Court directed the Industrial Court to hear the application for interim relief and if possible hear review application also and that petition is still pending in this Court. On the basis of the directions of this Court, the Member of the Industrial Court by his judgment and order dated 19-9-1989 rejected the Review Application and hence this petition.

5. It is stated that in the petitioner that those employees who are active members of the union and come in conflict with the management are not given extension and those employees who are favourable to the management are given extension and they continue in service. The Industrial Court committed an error in not appreciating the fact while giving extension to the persons who have already retired the promotional avenue of the existing staff will be affected to a considerable extent. The Industrial Court has also erred in not appreciating the fact that in these hard days of unemployment when well qualified, young and enthusiastic persons are not in a position to get employment, no useful purpose will be

served by allowing the persons who have already retired to continue in service. It is further stated by the petitioner that the Industrial Court has committed an error in not appreciating the fact that when in almost Government establishments and other public institutions the date of superannuation is 58 years and the date of superannuation in the Bank is 60 years and in the Government establishments and other public institutions, the extensions are granted only in exceptional circumstances. The Government has issued some Circulars to the effect that no employee should be granted reemployment on attaining the age of 60 years and the orders of the Industrial Court are inconsistent with the Circular of the Government. The Industrial Court has also committed error in not appreciating the extension to the employee will result into unfair labour practice and this practice will give uncontrolled, unguided and uncanalised powers to the management and therefore there will be pick and choose policy. The Industrial Court is not justifying to hold good the old standing orders. The observations of the Industrial Court that now a days the life span has increased and a person can work after the age of 60 years is a prescribed ratio and that observation does not necessarily qualify a person to get extension. The Industrial Court has erred in appreciating that the employee's social liabilities are not over when he/she reaches the age of 60 years. That is not a ground for giving extension to the employee. The Industrial Court has not directed the Bank to frame any guidelines with respect to grant of extension to the employees who have reached the age of superannuation. In absence of such guidelines, discretion exercised by the management is illegal and against the principles of natural justice.

6. I have carefully considered the grounds and contentions taken in the memo of the petition. I am not in agreement with any of the grounds mentioned in the memo of the petition.

7. It is complete and absolute discretion to give extension or new employment after attaining the superannuation age, may not be any right but it is given to the persons who have acted in best performance. The contention of the petitioner as mentioned in the petition that either extension should be given to all the persons without any discretion or not to any person as has no legal sanctity and is not entertained at all in view of the fact the extension is given only to those persons whose performance is found very good and satisfactory and their services are required in future also. In absence

of any convincing ground for extension, the order giving extension in service after attaining the age of superannuation or fresh employment, would not be illegal, null and void ab-initio. No satisfactory material is produced on record to show that extension is granted to any undeserving employee or candidate.

8. I do not find any merit in this petition. Accordingly, this petition is dismissed. Rule is discharged with no order as to costs.

-0-0-0-0-0-

/JVSatwara/